

ATTACHMENT

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June 5, 2007

Honorable Alice A. Molasky-Arman
Nevada Commissioner of Insurance
Division of Insurance-Legal Section
788 Fairview Drive, Suite 300
Carson City, NV 89701-5491

Re: UnitedHealth Group Acquisition of Sierra Health Systems

Dear Commissioner Molasky-Arman:

The AMA is writing to express its strong opposition to the proposed acquisition of Sierra Health Systems (Sierra) by UnitedHealth Group (United). The AMA has urged the United States Department of Justice to block the merger because of the impact in Nevada. The impact in the state of Nevada is unlike the impact in any market of any previous health insurer merger. Our testimony will focus on the anti-competitive effect this merger will have on Nevada insurance markets, a negative effect that will be compounded by questionable business practices engaged in by United in other markets. We also strongly support the position of the Nevada State Medical Association.

It is clear that United's goal in pursuing this merger is to dominate the Nevada insurance market, in particular Las Vegas. The numbers are truly staggering, as shown in the attached chart. For the past five years, the AMA has conducted the most in-depth study of commercial health insurance markets (by actual reported enrollment) in the country. This study, *Competition in Health Insurance: A Comprehensive Study of US Markets*, is based on the most current and credible data available and includes both HMO and PPO products. The AMA is in the process of finalizing our most recent edition, based on 2004 data. The findings for Nevada strongly suggest that this merger undermines competition in Nevada and in Las Vegas especially.

The AMA analysis of InterStudy and HealthLeaders data shows the following:

- At the state level, in the combined HMO/PPO market, United would have a market share of 43% after the merger, compared to its current market share of 14%. In the HMO market, United would have a 78% market share after the merger, compared to its current 11% market share.

In the Las Vegas-Paradise metropolitan statistical area (MSA), in the combined HMO/PPO market, United would have a market share of 56% after the merger, compared to its current market share of 18%. United would have a market share of 95% after the merger, compared to its current market share of 13% in the HMO market.

These market shares should be considered in the context of the financial aspects of United's operations. At a time when premiums continue to escalate, United is posting high profit margins. Since 2002 United has posted year-end earning increases of between 27% and 53%. For 2006 its net earnings increased 27%. United has also awarded its senior executives mind-boggling compensation packages over this same time period. United is currently in the midst of several ongoing investigations and shareholder lawsuits over illegally backdating senior executives' stock options to increase their already extravagant compensation.

The Threat of Market Dominance

The AMA has long been concerned that ongoing consolidation of health insurance markets will ultimately lead to a market dominated by one or two health insurers that places profits over patients. The ascendancy of a dominant health insurer jeopardizes patient care in two important ways. First, without competition to help ensure that patient and employer choice counterbalance profit motives, the for-profit health insurer's drive to maximize profits will inevitably compel it to place profits over patients.

Second, physicians have a professional, legal, and ethical responsibility to advocate on their patient's behalf. In the presence of health plan dominance the physician's role as patient advocate becomes even more critical. However, that role is being systematically undermined as dominate insurers are able to impose take-it or leave-it contracts that include provision that directly impact patient care, such the determination of what is "medically necessary care." A physician who engages in aggressive patient advocacy risks exclusion from the dominant health plan's network and faces the realistic possibility that his/her practice will no longer be financially viable. In the presence of these dynamics, only state oversight and intervention can prevent deterioration of the patient-physician relationship, foster physician advocacy, and make patient choice a reality.

United's Failure to Comply with State Regulations

United's conduct shows a dismissive attitude towards its state regulatory obligations. It has been fined by a number of states for failing to comply with state law since 2001. Moreover, in some of those states, United has been fined more than once for the same conduct. United has the unenviable position of having had the largest fines ever levied against a health insurer in several states.

Specific examples include:

Arizona: In March 2006, the Arizona DOI fined United for the second time for violations of a number of state laws. These include state prompt payment laws, and state laws on member's rights to appeal denials of care. United was fined \$364,750, the largest fine in Arizona's history. This was the second fine levied against United for similar violations. The first was in 2003. In the 2006 case, the director of the Arizona DOI stated that, "I will not tolerate knowing violations of consent orders."

- Nebraska: In December 2006, the Nebraska DOI filed a complaint which stated that United violated 18 state laws over 800 times. United delayed decisions, made incorrect decisions about coverage, and had an inadequate network of emergency services in rural areas. A settlement was reached in May 2007. It includes a \$650,000 fine, the largest ever levied by the Nebraska DOI. The settlement also requires United to meet customer service standards and to give United's Nebraska staff the final decision on claims and grievances. This was the second time United has been fined for similar state law violations. The 2005 investigation resulted in United paying a \$72,500 fine.
- New York: In 2006, the New York State Health Department took the unusual step of banning United from enrolling any new customers in its HMO plan because United continued to repeatedly defy state regulations. These include wrongly denying payment to providers and filing incomplete and inaccurate reports with the state. A state official noted that, "we've had several years of findings, United doing corrective action plans, but then we go out again, and we have the same findings."
- Rhode Island: In April 2007, UnitedHealthcare of New England was fined \$67,500 for violating a state law intended to protect health-insurance coverage for small-business employees. United failed to provide documentation showing that it had complied with the law. In addition, according to documents released by the Health Insurance Commissioner's office, United overcharged members who were in poor health.
- Texas: Between 2001 and 2005, the Texas Department of Insurance (TDI) has fined United three times for violating Texas prompt pay laws. The most recent fine, issued in December 2005, included a finding that United failed to report accurate and complete provider claims data for over 2 years. The 2005 fine totaled \$4 million and United also agreed to pay restitution to physicians.
- Missouri: In *Schoedinger vs. United*, a Missouri physician sued United for failing to comply with the state prompt payment law. In its finding of facts, the court found that the plaintiff had proven that United did not pay his claims within the time period set by Missouri law. Specifically, the 2006 opinion found that "United's claims processing

system was flawed in many ways, including denying, reducing and improperly processing claims on a regular basis. And despite innumerable requests, United was unwilling to remedy the underlying errors in its systems. United was consistently delinquent in paying claims.”

Ongoing State Investigations of United’s Business Conduct

In the past several months, two states have announced investigations into United’s business practices and whether they comply with state law. These investigations are specified below.

- California: The California Department of Insurance and the California Department of Managed Health Care (CDMHC) have announced an investigation into a range of United business practices. According to the California Medical Association (CMA), there is a liaison process between CMA and United. While United is generally responsive to the individual physician complaints, it is not responsive to fixing the underlying issues. This causes the objectionable practices to continue which must be battled one physician and one claim at a time. The regulators indicated that their objective is to bring United into compliance with state laws for the benefit of California patients.
 - Note: In May 2007, the CDMHC found that United subsidiary PacifiCare engaged in “dishonest and unfair” conduct when it failed to disclose its planned termination of a provider network during open enrollment. The CDMHC ordered PacifiCare to continue to authorize and allow access to the network through November 2007.
- New Jersey: In April 2007, the New Jersey Department of Banking and Insurance ordered United to justify a lab referral protocol that has outraged physicians across the country. This policy, which was the outgrowth of a 10-year exclusive contract with Lab Corp, provides that if physicians refer to an out-of-network lab, they can be fined or dropped from the network. This is the first instance of a health plan threatening financial penalties for out-of-network referrals. The DOBI ordered United to “appear and show cause why it should not be required to pay restitution or take other remedial measures.” This is in regards to the effects of its proposed sanctions on physicians.

The AMA believes that United’s conduct reflects a philosophy that it is more cost-effective to violate state law and possibly pay a fine than to assure compliance with laws designed to protect both patients and physicians. The AMA’s first concern is that this unprecedented merger will create monopoly conditions in Nevada to the detriment of Nevada citizens. That being said, given the magnitude of this merger in Nevada and United’s track record in other states, if this merger is allowed to go forward, it is incumbent on the Nevada Department of Insurance to assure that United is held accountable for compliance with state laws.

Alice A. Molasky-Arman
June 5, 2007
Page 5

If the AMA can be of further assistance, please do not hesitate to contact me. The AMA appreciates the opportunity to comment on this matter.

Sincerely,

Michael D. Maves, MD, MBA

Attachment

cc: Larry Matheis, Executive Director, Nevada State Medical Association